IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Banshi Vs. State of Rajasthan
(D.B. Criminal Appeal No.1323/2002)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 3-9-2002 in Sessions Case No.20/2001 passed by Shri J.P. Sharma, RHJS, Additional Sessions Judge Kotputli District Jaipur.

Date of Judgment: August 01, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. Ravi Shankar Sharma, for the appellant.

Mr. M.L.Goyal, Public Prosecutor for the State.
Mr. Ashok Yadav, for the complainant.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

On the charges of killing his wife and causing disappearance of evidence, Banshi, appellant herein, was put to trial before learned Additional Sessions Judge, Kotputli District Jaipur, who vide judgment dated September 3, 2002 convicted and sentenced him as under:-

U/s.302 IPC:

To suffer life imprisonment and fine of Rs.1000/-, in default to further suffer imprisonment for three months.

U/s.201 IPC:

To suffer rigorous imprisonment for seven years and fine of Rs.500/-, in default to further suffer imprisonment for two months.

The substantive sentences were ordered to run concurrently.

2. It is the prosecution case that on August 30, 2001 informant Om Prakash (Pw.21) submitted a written report (Ex.P-22) at Police Station Kotputli to the effect that on August 28, 2001 Urmila was severely beaten up by her husband Banshi as a result of which she died. Thereafter Banshi and his family members in order to causing disappearance of evidence hurriedly and secretly performed the funeral of the deceased. Ram Niwas and Hari Singh were named as eye witnesses of the occurrence. On that report a case under sections 302 and 201 IPC was registered and investigation commenced. Necessary memos were drawn, statements of witnesses were recorded, appellant was arrested and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge Kotputli District Jaipur. Charges under sections 302 and 201 IPC were framed against the appellant, who denied the charges and claimed trial. The prosecution in support of its case examined as may as 23 witnesses. In the explanation under Sec.313 CrPC, the appellant claimed innocence. No witness in support of defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated above.

3. We have heard learned counsel for the appellant and learned Public Prosecutor and with their assistance scanned the material on record.

4. The prosecution case is founded on the testimony of Om Prakash (Pw.21), Sunita (Pw.4) and Karan Singh (Pw.19). Om Prakash in his deposition stated that on August 28, 2001 deceased had made a call to her daughter Sunita on phone and asked Sunita to meet her. When he and Sunita reached Kanwarpura to meet the deceased, they came to know that

she was killed and hurriedly cremated by the appellant and his family members. Sunita daughter of deceased deposed that on August 28, 2001 her mother made a call to her on phone informing her that her father wanted to kill her (deceased). When she reached the village on August 30, 2001 she came to know that her mother was killed by her father. Testimony of Sunita gets corroboration from the statements of Karan Singh.

5. On a close scrutiny of the evidence we find that none of the witness had seen the incident. Om Prakash, Sunita and Karan Singh reached to the house of appellant after the cremation of deceased was performed. Ram Niwas (Pw.3) and Hari Singh (Pw.20), who were named in the FIR as eye witness, did not support the prosecution case and they were declared hostile. The appellant in his explanation under section 313 CrPC stated as under:-

> "मेरा वंश चलाने के लिए मेरे भाई के लडके को गोद लेना चाहता था मेरी लडकी सुनीता ने इसलिए करण सिंह व ओम प्रकाश से मिल कर झूंठा इल्जाम लगाया है कि सम्पत्ति भाई के पास चली जायेगी उसे नहीं मिलेगी। मेरी पत्नी के मरने के बाद मेरा जंवाई करण सिंह कहता था कि मैं घर जंवाई बनकर रहूंगा। मैं रखना नहीं चाहता हूं। इसलिए झूंठा बयान दे रहा है।"

6. Considering the entire material on record we find that origin and genesis of the occurrence has been withheld by the prosecution. This possibility, therefore, cannot be ruled out that after hot exchanges on the issue of adoption the appellant lost his temper and gave beating to Urmila. It can be inferred that the appellant had knowledge that the blow inflicted by him was likely to cause death, even though he had no intention of causing death or such bodily injury as is likely to cause death. Therefore the appellant is found guilty for the offence punishable under Part II of Section 304 IPC. He is also found guilty under section 201 IPC for causing

disappearance of evidence.

7. For these reasons, we partly allow the appeal of appellant Banshi and instead of section 302 we convict him under section 304 part II IPC. Looking to the fact that the appellant has already undergone confinement for a period more than five years and ten months, the ends of justice would be met in sentencing him to the period already undergone by him in confinement. We also maintain the conviction of appellant under section 201 IPC. Since the appellant has not been convicted for capital offence, we reduce the sentence from seven years to three years and fine of Rs.500/- in default to further suffer six months simple imprisonment. The appellant, who has already served the sentence and is in jail, shall be set at liberty forthwith, if he is not required to be detained in any other case.

The impugned judgment of learned trial court stands modified as indicated above.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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